

ORIGINAL

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Southern District of New York
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#1

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,

:

Plaintiff,

:

COMPLAINT

- against -

:

04 Civ.

NEW PUCK, LP,

04 CV 05449

Defendant.

:

JUDGE RAKOFF

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Plaintiff United States of America (the "United States"), by its attorneys John Ashcroft, the Attorney General of the United States, and David N. Kelley, the United States Attorney for the Southern District of New York, alleges as follows:

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1. This is a civil action brought to redress discrimination on the basis of disability in violation of Title III of the Americans with Disabilities Act of 1990 ("ADA"), 42 U.S.C. §§ 12181 et seq., and its implementing regulation, 28 C.F.R. Part 36 (the "Regulation").

JURISDICTION AND VENUE

2. This Court has jurisdiction over this action pursuant to 42 U.S.C. § 12188(b)(1)(B) and 28 U.S.C. §§ 1331 and 1345.

3. Venue lies in this District pursuant to 28 U.S.C. § 1391(b), as all of defendant's acts of discrimination alleged in this complaint occurred in this District.

THE PARTIES

4. Plaintiff is the United States of America.

5. Upon information and belief, defendant New Puck, LP ("New Puck") is a New Jersey partnership with its principal place of business located in Florham Park, New Jersey.

6. Upon information and belief, New Puck owns places of public accommodation within the Puck Building.

THE PUCK BUILDING

7. The Puck Building is a building located at 295 Lafayette Street, New York, New York. New Puck owns the public function rooms on the first and seventh floors of the Puck Building, including the public function rooms known as the Grand Ballroom, the Skylight Ballroom, and the Lafayette Ballroom, as well as lavatories, hallways and galleries serving these function rooms.

8. The Puck Building is a place of public accommodation within the meaning of 42 U.S.C. § 12181(7) because,

among other things, the Puck Building contains "an auditorium, convention center, lecture hall, or other place of public gathering," 42 U.S.C. § 12181(7)(D); and "a restaurant, bar, or other establishment serving food or drink," 42 U.S.C. § 12181(7)(B).

9. Defendant New Puck is a public accommodation within the meaning of Title III because it owns places of public accommodation within the Puck Building. 42 U.S.C. § 12181(7); 12182; 28 C.F.R. § 36.104.

**FIRST CLAIM FOR RELIEF
(Architectural Barriers to Access)**

10. Numerous architectural barriers exist at the places of public accommodation within the Puck Building that prevent or restrict access to the Puck Building by individuals with disabilities. The Puck Building's services, features, elements and spaces are not readily accessible to, or usable by, individuals with disabilities, as specified by the Regulations promulgated under the ADA. See Standards for Accessible Design, 28 C.F.R. Part 36, App. A (the "Standards").

11. Architectural barriers to access that exist in the places of public accommodation within the first and seventh floors of the Puck Building include, but are not limited to, the following:

A. Certain routes connecting elements and spaces within the Puck Building are not readily accessible to, and

usable by, individuals with disabilities, including individuals who use wheelchairs. Among other barriers, stairs prevent access to the Puck Building by persons who use wheelchairs. 42 U.S.C. § 12182(b)(2)(A)(iv); 28 C.F.R. Part 36, App. A, §§ 4.1.2(1), 4.1.3(1), 4.3, 4.5, 4.10, and 4.13.

B. The public restrooms within the Puck Building are not readily accessible to, and usable by, individuals with disabilities, including individuals who use wheelchairs. 42 U.S.C. § 12182(b)(2)(A)(iv); 28 C.F.R. Part 36, App. A, §§ 4.1.3(11), 4.22.

C. The Puck Building lacks visual alarm signals on its fire alarm system that are readily accessible to, and usable by, individuals with disabilities, including individuals who have hearing impairments. 42 U.S.C. § 12182(b)(2)(A)(iv); 28 C.F.R. Part 36, App. A, §§ 4.1.3(14), 4.28.

D. The signage throughout the Puck Building is not readily accessible to, and usable by, individuals with disabilities, including individuals with visual impairments. 42 U.S.C. § 12182(b)(2)(A)(iv); 28 C.F.R. Part 36, App. A, §§ 4.1.3(16), 4.30.

E. The Puck Building has protruding objects. 42 U.S.C. § 12182(b)(2)(A)(iv); 28 C.F.R. Part 36, App. A, §§ 4.1.3(2), 4.4.1.

F. The elevators serving the Puck Building are not readily accessible to, and usable by, individuals with disabilities, including individuals who use wheelchairs or who have visual impairments. 42 U.S.C. § 12182(b)(2)(A)(iv); 28 C.F.R. Part 36, App. A, §§ 4.1.3(5), 4.10.

12. Upon information and belief, it is readily achievable for defendant to remove the barriers to access that exist as set forth in paragraph 11. By failing to remove barriers to access to the extent that it is readily achievable to do so, defendant has violated Title III of the ADA, 42 U.S.C. § 12182(b)(2)(A)(iv).

SECOND CLAIM FOR RELIEF
(Readily Achievable Alternatives to Barrier Removal)

13. Plaintiff repeats and realleges paragraphs 1 through 12 as if fully set forth in this paragraph.

14. In the alternative, if it is not readily achievable to remove some or all of the architectural barriers to access set forth in paragraph 11, defendant must provide readily achievable alternatives to barrier removal to make the goods and services offered at the Puck Building accessible to individuals with disabilities, as required by 42 U.S.C. § 12182(b)(2)(A)(v) and 28 C.F.R. § 36.305. Upon information and belief, there are readily achievable alternatives to barrier removal that the defendant could have undertaken in order to make the goods and services offered at the Puck Building accessible to individuals

with disabilities. 42 U.S.C. § 12182(b)(2)(A)(v); 28 C.F.R. § 36.305.

THIRD CLAIM FOR RELIEF

15. Plaintiff repeats and realleges paragraphs 1 through 12 as if fully set forth in this paragraph.

16. Upon information and belief, there is reasonable cause to believe that defendant's failure to comply with Title III of the ADA constitutes a pattern or practice of discrimination on the basis of disability, and such discrimination raises an issue of general public importance. 42 U.S.C. § 12188(b)(1)(B); 28 C.F.R. § 36.503.

17. Upon information and belief, persons with disabilities, including complainant, have been aggrieved by this discrimination.

PRAYER FOR RELIEF

WHEREFORE, the United States of America prays that this Court enter judgment:

A. Declaring that defendant has violated Title III of the ADA and its implementing Regulation by (1) failing to remove architectural barriers to access in the Puck Building pursuant to 28 C.F.R. § 36.304; and (2) failing to provide alternatives to barrier removal pursuant to 28 C.F.R. § 36.305, where to do so would be readily achievable.

B. Ordering defendant to remove all architectural barriers pursuant to 42 U.S.C. § 12182(b)(2)(A)(iv); 28 C.F.R. § 36.304; 28 C.F.R. Part 36, App. A, including, but not limited to, the barriers to access set forth in paragraph 11;

C. Ordering defendant to provide readily achievable alternatives to barrier removal in those instances, if any, where it is not readily achievable to remove architectural barriers, pursuant to 42 U.S.C. § 12182(b)(2)(A)(v) and 28 C.F.R. § 36.305;

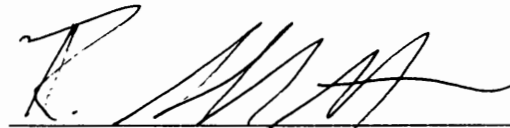
D. Assessing a civil penalty against defendants in an amount authorized by 42 U.S.C. § 12188(b)(2)(C); 28 C.F.R. § 36.504(a)(3), in order to vindicate the public interest; and

E. Granting such other relief as the interests of justice may require.

Dated: New York, New York
July 14, 2004

JOHN ASHCROFT
Attorney General

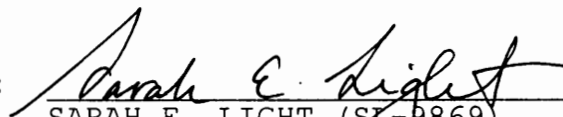
By:



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